IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY,14TH DAY OF JUNE 2007/24TH JAISTHA 1929

Crl.Rev.Pet.No. 1593 of 2007-D
CRL.A.NO. 465/06 OF THE SESSIONS JUDGE, HRISSUR AND
C.C.NO. 61/05 OF THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT,IRINJALAKUDA.

REVN. PETITIONER: APPELLANT/2ND ACCUSED.

SIVA @ SIVADAS,
S/O. ESKIYAPPAN, AGED 24 YEARS, ODAKKARA,
KANYAKUMARI, NAGARKOVIL.

BY ADV. SRI.C.A.CHACKO

RESPONDENTS: RESPONDNET/COMPLAINANT.

THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR MR. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/06/2007,THE COURT ON 14-6-2007 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO.1593 of 2007

DATED THIS THE 14th JUNE 2007

ORDER

The revision petitioner is the 2nd accused in C.C.No.61/2005 in the file of the Judicial Magistrate of the First Class, Irinjalakuda who stands convicted along with A1 for the offences under Sections 457, 380, 461 read with Section 34 of the Indian Penal Code. The sentence imposed is to undergo rigorous imprisonment for a period of two years each under Sections 454, 380 read with Section 34 I.P.C. and also to undergo rigorous imprisonment for a period of one year each for the offence under Sections 461 read with Section 34 IPC. The substantive sentences are to run consecutively. The revision petitioner is undergoing imprisonment.

2. The prosecution case is that in between 12-7-2000 at 8.45 a.m. and 13-7-2000 at 4.45 p.m. the accused entered into the residential house of the de facto complainant bearing No. XX/145 of Irinjalakuda Municipality by dismantling the lock of the

door situated on the rear side of the house and entered into the bed room by breaking open the ceiling planks and opened the almirah and committed theft of 14 ½ sovereigns of gold ornaments and money amounting to Rs.1,500/-.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 11, Exts.P1 to P9(a) and MO.1. Both the accused were arrested much subsequently, i.e. on 22-11-2004 by PW7, the Sub Inspector and it was on their questioning the fact of theft committed in 12/13-7-2000 was revealed and the case with respect to Ext.P4 F.I.R. was reopened vide Ext.P5 report. The recovery of MO.1 was effected by PW7, the Sub Inspector as per Ext.P2 seizure mahazar from the jewellery of PW3; Pws.2 and 4 are the witnesses to the same. But I find that the recovery was effected in pursuance of the statement of the first accused and the article recovered is a gold ingot and not the ornaments as such stolen from the house of PW1. Hence, I find that the above evidence would not attract Section 27 of the Evidence Act. All the same, the testimony of PW7, the Sub Inspector that the accused lead him to PW2, the goldsmith, to

whom the accused had sold the ornaments is relevant conduct admissible under Section 8 of the Evidence Act.

4. I find that the main evidence against the revision petitioner/2nd accused is that the finger print of the revision petitioner was found in the scene of occurrence as evident from the testimony of PWs. 6 to 11. Pws.9, the finger print expert has testified as to the identity of the finger print of the accused. PW9 has proved Ext.P7 report prepared by him on examination of the finger print received, i.e. from the scene of occurrence and from the arrest slip received from the police station. He has certified that the left thump impression from the arrest slip and the finger print taken from the scene of occurrence tallied. Ext.P8 is the enlarged photograph of the chance print and Ext.P9 is the enlarged photograph of the fingerprint from daily arrest slip. PW10 is the Departmental Photographer who took photograph of the chance print on 14-7-2000. Ext.P8(a) is the negative of Ext.P8 photograph. PW11 is a police photographer who took Ext.P9 photograph of which Ext.P9(a) is the negative from the daily arrest slip. The contention that CW9 another finger print

expert who developed the chance print at the spot was not examined is fatal, I find, cannot be upheld. I find that the evidence of Pws.9, 10 and 11 and Exts.P7 to P9, the report, photographs and negatives do establish the fact that the chance finger print found on the scene of occurrence is that of the 2nd accused/revision petitioner. PW2, the goldsmith and PW3, the jewellery owner who purchased the ingot from PW2 has fully supported the prosecution version. I find that the above evidence and the conduct of the revision petitioner/A2 in leading PW7, the Sub Inspector, to PW2 do establish beyond reasonable doubt in the involvement of A2/revision petitioner.

In the circumstances, I find no reason at all to interfere in the findings of the courts below. The conviction and sentence is confirmed. The Crl.revision petition is dismissed.

K.R.UDAYABHANU, JUDGE

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